

### REMARKS

Entry of the amendment is respectfully requested since it should reduce the issues on appeal and does not introduce any new matter. Support for the amendatory language can be found in paragraphs [0044] (“densified”), [0051] (“solid or semi-solid”) and [0054], [0059] (“compound”). Reconsideration is respectfully requested in light of the foregoing amendment and the remarks which follow.

Claims 1-3 are before the Examiner. Claim 1 has been amended to address points raised in the Office actions and to adopt “suggestions”.

Claims 1-2 are rejected under 35 U.S.C. 102(b) as being anticipated by Shimizu et al (USPPA 2002/0102369) as evidenced by Scholz et al. (USP 6951642). Applicants respectfully traverse.

For a reference to be anticipatory, it must teach each and every element required by the claims. Claim 1 is clearly directed to a “solid or semi-solid” pharmaceutical or cosmetic formulation. The formulation contains an effective amount of the active compound, e.g. drug as well as an auxiliary amount of hydrophobic highly disperse densified silicon dioxide, having a tamped density of 90 to 400 g/l, determined in accordance with DIN 55943. The silicon dioxide contains a maximum of 3.0 wt.% of water-wettable contents.

This claimed subject matter is clearly not a cellulose ester film useful for use as a protective film for a polarizing plate which is what Shimizu et al teach. Shimizu et al do not mention a solid or semi-solid cosmetic or pharmaceutical composition. Scholz et al. does not suggest the composition as claimed is inherently taught by Shimizu et al.

Withdrawal of the rejection is respectfully requested.

Claim 3 is rejected under 35 U.S.C. 103(a) as being unpatentable over Shimizu et al (USPPA 2002/0102369) as evidenced by Schotz et al. (USP 6,951,642). Applicants respectfully traverse.

Shimizu et al. is not directed to a solid or semi-solid pharmaceutical or cosmetic formulation. The AEROSIL product present in Shimizu et al product is a “filler”. It does not impart “flowability”. There are no pharmaceutically or cosmetically active compounds present in effective amounts. The silica employed by Shimizu et al. is a “filler” for a coating. There is no teaching of a pharmaceutical carrier. There is no teaching of an auxiliary “aid” for a cosmetic.

Scholz et al. teaches a vinyl polymer emulsion. The emulsion is taught in the context of moisturizing compositions. It is not seen why such a composition would be combined with Shimizu et al. Even if it were, the combined teaching would not lead one to a solid or semi-solid pharmaceutical or cosmetic formulation like that claimed. Neither Scholz et al. or Shimizu et al. desire a flowable powder suitable for tableting or placement in a capsule.

It is not seen how “optimization” of Shimizu et al. leads to the claimed range.

Since a prima facie case has not been established, withdrawal of the rejection is respectfully requested.

Claims 1-3 are rejected under 35 U.S.C. 103(a) as being unpatentable over Sebillotte-Arnaud et al. (USPPA 200/0039976). Applicants respectfully traverse.

Sebillotte-Arnaud et al. teach a cosmetic cleansing composition. Included in the composition is a foaming surfactant, a hydrophobic silica and an oxyalkylated compound. The hydrophobic silicas taught by Sebillotte-Arnaud et al. include AEROSIL products. None are identified as AEROSIL R972 V. None of the AEROSIL products are taught as densified. None have a density that falls within the claimed density range. It is noted that Sebillotte-Arnaud et al. teach (paragraph [0021]) a preferred density range 50-150 g/l for compacted silica.

Also, there is no teaching of tablets, capsules or pharmaceuticals. There is no apparent need for a flowable granules or hard tablets. It appears from paragraph [0104] that the addition of the hydrophobic silica and oxyethylated compound thicken the cleaning composition and lead to better rheological properties. These compounds are not identified as impacting the cleaning properties of the foam.

The Examiner acknowledges that the Sebillote-Arnaud et al. reference does not teach AEROSIL R972 V but urges that its selection and use in Sebillote-Arnaud et al. composition would have been a obvious. No reference is relied upon for such a teaching.

This obviousness finding by the Examiner was not directed to the present amended claims. The amend claims are directed to solid or semi-solid formulations where the where the active compound is present in a medically or cosmetically effective amount. Also, these claims are believed to be commensurate in scope with the unexpected results presented in the specification.

AEROSIL R972 V is a distinct from AEROSIL R972. The Tables in the specification show the use of the different AEROSIL R972 products result in different outcomes. These differences would not be expected from the art of record. Also CP 1 and CP 2 establishes the criticality of the "water-wettable contents make up a max. of 3.0 wt %" limitation and also the density. See Tables 7 and 8. This too is unexpected.

Accordingly, it is again submitted that the teachings relied upon do not establish a proper prima facie case of obviousness. Further, the results shown for AEROSIL R972 V are not expect and are considered to rebut a prima facie case. The results shown in the tables are believed to be commensurate in scope with the claims as now amended.

Withdrawal of the rejection is respectfully requested.

#### **Request for Interview**

Applicants respectfully request either a telephonic or an in-person interview should there be any remaining issues.

### CONCLUSION


All of the stated grounds of rejection have been properly traversed, accommodated, or rendered moot. Therefore, it is respectfully requested that the Examiner reconsider all presently outstanding rejections and that they be withdrawn. It is believed that a full and complete response has been made to the outstanding Office Action and, as such, the present application is in condition for allowance. If the Examiner believes, for any reason, that personal communication will expedite prosecution of this application, the Examiner is invited to telephone the undersigned at the number provided.

It is not believed that extensions of time are required, beyond those that may otherwise be provided for in accompanying documents. However, in the event that additional extensions of time are necessary to prevent abandonment of this application, then such extensions of time are hereby petitioned under 37 C.F.R. 1.136(a), and any fees required therefore are hereby authorized to be charged to **Deposit Account No. 02-4300, Attorney Docket No.: 032301.608.**

Respectfully submitted,

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